

### **Remarks**

Applicants respectfully request reconsideration of the application in view of the foregoing amendments and following remarks. Claims 18, 67, 68 and 73-91 are pending in the application. Claims 18, 67, 68 and 73-91 are rejected.

### **Examiner Interview**

Applicants thank Examiner Jeanty for his time during a telephonic interview on December 16, 2008. The independent claims were discussed. Although specific agreement was not reached, the interview was helpful in advancing prosecution.

### **Cited Art**

The Action cites:

U.S. Patent No. 5,197,004 to Sobotka et al. ("Sobotka");

U.S. Patent No. 6,728,795 to Pathria et al. ("Pathria");

U.S. Patent Pub. No. 2003/0120630 to Tunkelang ("Tunkelang");

"Beat the Competition Every Time", Ziff Davis Smart Business for the New Economy, March 2002 ("Ziff Davis").

The Requirement for Information mentions Overholt, "True or false: You're hiring the right People," Fast Company, February 2002 ("Overholt").

### **Claim Rejections under 35 U.S.C. § 103**

Claims 18, 67-68, and 73-88 are rejected under 35 U.S.C. § 103(a) as unpatentable over Sobotka in view of Pathria and further in view of Tunkelang and Ziff Davis.

Claims 90-91 are rejected under 35 U.S.C. § 103(a) as unpatentable over Pathria in view of Ziff Davis and further in view of Tunkelang.

### **Claims 18, 67-68, and 73-88 (Over Sobotka, Pathria, Tunkelang, and Ziff Davis)**

Applicants refer to arguments in earlier replies regarding Sobotka, Pathria, and Tunkelang. Applicants note that Ziff Davis describes the “Smart Assessment” technology of Unicru, Inc. (now “Kronos Talent Management Inc.”), which is also assignee of the present application. In an Information Disclosure Statement, Applicants disclosed U.S. Patent Pub. No. 2002/0 042 786 to Scarborough et al., which also describes the “Smart Assessment” system of Unicru, Inc. Additional patent applications and patents sharing a priority date with Scarborough are disclosed in an Information Disclosure Statement filed herewith.

The Smart Assessment technology is fundamentally different from the claimed invention. The rejection of claim 18 refers to Ziff Davis, which states at pages 54-55 (emphasis added):

Potential applicants are directed to the in-store kiosk, where they complete applications and screening tests online. In the background, Unicru compares applicants’ answers to **an ideal candidate profile**, and creates an assessment report with red, yellow, and green icons highlighting the person’s strengths and weaknesses . . .

A back-end reporting system hosts application records and keeps tabs on the **most successful hires**, so G.I. Joe’s can look for more candidates just like them.

Separately, Overholt describes at page 112 (emphasis added):

As part of a larger “Smart Assessment,” a patent-pending artificial-intelligence program, Unicru’s questionnaires screen for management, dependability, . . .  
“Our system allows you to **clone your best, most reliable people**,” says industrial psychologist David Scarborough.

Scarborough similarly describes at [0199] (emphasis added):

If used consistently over time, the workforce may eventually be comprised entirely of employees selected on the basis of their similarity to **successful former employees**. [See also FIGS. 14A-14D.]

However, as Scarborough makes clear, the “ideal candidate profile” referred to in Ziff Davis, the “best, most reliable people” of Overholt, and the “successful former employees” of Scarborough are not a “single particular employee who previously performed well in the position” as recited by claim 18. Although the difference may seem minor in text form, Smart Assessment involves a fundamentally different approach.

For example, as detailed in FIG. 10 and FIG. 11 and elsewhere in Scarborough, the Smart Assessment technology involves training a neural network with data from multiple employees (e.g., a “training set”), not a “single particular employee who previously performed well.” In Smart Assessment, there is no matching between job candidates and another single person. An “ideal candidate profile” is a simplistic description of how a neural network functions, which is appropriate for an article in Fast Company magazine. But, the article shows Smart Assessment did not involve a “single particular employee who previously performed well in the position” as recited by claim 18. [See [0090] - [0091] of Scarborough, which describe FIG. 10.]

The Smart Assessment technology is fundamentally different. For example, the output of the neural network is not the “job candidate points closest to the desired job candidate criteria” as recited by claim 18.

The Smart Assessment technology, while being prosecuted in patent applications by the same assignee as the present application, is entirely different. The description of the Smart Assessment technology in Scarborough is directed to assessing a candidate employee, not finding the closest job candidates to an employee who previously performed well. Accordingly, Applicants do not believe Ziff Davis supports a § 103 rejection, alone or in combination with the other three references.

For at least these reasons, independent claims 18, 67, 77, and 83 are allowable along with their respective dependent claims.

**Claims 90-91 (Over Pathria, Ziff Davis, and Tunkelang)**

Claims 90-91 recited “matching the desired job candidate characteristics extracted from the job candidate data for the single particular employee to a set of a plurality of job candidates for the position via an  $n$ -dimensional concept space” and are therefore also allowable over Pathria in view of Ziff Davis and further in view of Tunkelang.

Applicants refer to earlier replies for arguments concerning Pathria and Tunkelang. Ziff Davis, alone, or in combination with the other two references, is not sufficient to support a § 103 rejection because it does not describe “the single particular employee” as recited by claims 90-91.

Claims 90-91 are therefore allowable at this time.

### **37 C.F.R. 1.105 – Requirement for Information**

The Examiner has requested information with respect to the Smart Assessment technology as documented in the Overholt reference. In the interest of open disclosure, Applicants file herewith an Information Disclosure Statement containing various references describing the Smart Assessment technology, including the requested white paper “Building a Competitive Advantage with a Hiring Management System.”

However, Applicants have not conducted a full search of all available documents relating to Smart Assessment because Applicants do not believe that such documents would generate information any more relevant than that already provided. For example, the previously disclosed Scarborough reference (U.S. Patent Pub. No. 2002/0 042 786) contains a detailed description of Smart Assessment’s operation. Additional patent publications and patents to Scarborough et al. having a shared priority date and similar description are also disclosed in an Information Disclosure Statement filed herewith.

Regarding publications that any of the inventors relied upon to develop the disclosed subject matter, the inventors no longer work for the assignee. Attempts were made to find the inventors, but no email addresses, telephone numbers, or mailing addresses have been found. However, the inventors indicated they understood the duty of disclosure, and references were already cited in past Information Disclosure Statements.

If anything further is required, Applicants will make additional efforts. However, Applicants' representative believes that all known information relevant to the patent application has now been disclosed in the present and past Information Disclosure Statements.

### **§ 101 Concerns**

Applicants recognize the current issues regarding patentability under § 101 and point to language in each of the independent claims as follows:

- 18: "computer-implemented" and "matching, by a computer"
- 67: "wherein the generating and matching steps are performed by a computer system"
- 77: "At least one computer-readable storage medium"
- 83: "at least one processor"
- 90: "the generating and the matching are performed by a computer system"
- 91: "One or more computer-readable storage media comprising computer-executable instructions"

For at least these reasons, the claims are allowable under § 101.

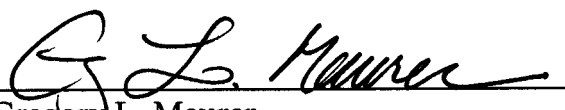
**Conclusion**

The claims in their present form should now be allowed. Such action is respectfully requested.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

One World Trade Center, Suite 1600  
121 S.W. Salmon Street  
Portland, Oregon 97204  
Telephone: (503) 595-5300  
Facsimile: (503) 595-5301

By   
Gregory L. Maurer  
Registration No. 43,781